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**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

KRISTEN HALL, *individually and on  
behalf of all others similarly situated,*

Plaintiff,

v.

MYTHICAL VENTURE, INC.

Defendant.

Case No.: 2:23-cv-10324-JFW-KES

**MEMORANDUM IN SUPPORT  
OF UNOPPOSED MOTION TO  
EXTEND CLASS  
CERTIFICATION DEADLINE**

Hon. John F. Walter

Motion date: April 9, 2024

Complaint Filed: Oct. 28, 2021

TAC Filed: Nov. 13, 2023

Transferred: Dec. 13, 2023

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

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**MEMORANDUM IN SUPPORT  
OF UNOPPOSED MOTION TO  
EXTEND CLASS  
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Hon. John F. Walter

Motion date: April 2, 2024

Complaint Filed: Oct. 28, 2021

TAC Filed: Nov. 13, 2023

Transferred: Dec. 13, 2023

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF UNOPPOSED  
MOTION TO EXTEND CLASS CERTIFICATION DEADLINE**

Plaintiff, Kristen Hall (“Plaintiff” or “Hall”) files this memorandum of law in support of her unopposed motion to extend the class certification deadline from April 16, 2024 until May 16, 2024. This motion is not opposed by Defendant Mythical Venture, Inc. d/b/a “Smosh” (“Defendant” or “Smosh”).

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

As articulated at length below, good cause exists to grant this unopposed motion. Hall promptly issued discovery seeking data from Smosh relevant for class certification promptly after their Rule 26(f) conference. On January 30,

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

1 2024, Smosh’s attorneys informed Hall’s counsel it would not be producing class  
2 data indicating the dates, times and phone numbers of persons texted by Smosh, as  
3 such data was in the sole possession of its former vendor, third-party  
4 Community.com, Inc. (“Community”), whose platform Smosh used to send  
5 marketing messages during the class period. After being told as much, Plaintiff’s  
6 counsel promptly served a subpoena on Community. In-house counsel for  
7 Community has been in communication with counsel for the Parties.  
8 Community’s in-house counsel has advised she is new to her position, that the  
9 company has had considerable staff turnover, and Community needed additional  
10 time to produce the class data. Because of the volume of data, coupled with the  
11 fact Community is not a named party to the litigation and because of the staff  
12 turnover within the company and difficulties compiling the relevant data, Plaintiff  
13 agreed to afford Community until March 14, 2024 to produce responsive  
14 documents and data, before filing a motion to enforce.  
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20 Hall has been diligent in seeking discovery from both the Defendant and the  
21 relevant third-party, and the delay in the production of relevant data for class  
22 certification is notwithstanding her diligent efforts. Further, the Defendant does  
23 not oppose the proposed 30 day extension, reflecting it would not be prejudiced.  
24 Additionally, Plaintiff does not seek to extend the discovery end date or dates  
25 related to trial. The case would, therefore, not be disrupted or delayed by the  
26 proposed extension of the class certification deadline. Finally, this is Plaintiff’s  
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MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

1 first proposed extension of any date in the schedule issued by this Court. For those  
2 reasons, which are set forth below, Plaintiff's unopposed motion to extend the  
3 class certification deadline from April 16, 2024 until May 16, 2024, should be  
4 granted.  
5

## 6 7 **II. FACTUAL BACKGROUND**

8  
9 After remand from the Ninth Circuit, this putative class-action was  
10 transferred from the Eastern District of California to this Court on December 13,  
11 2023. ECF No. 83. The Parties promptly drafted their respective portions of the  
12 Rule 26(f) report and plan, held their Rule 26(f) conference on December 22,  
13 2023. ECF No. 91.  
14

15 Initially, Plaintiff understood Smosh would be able to produce the  
16 documents and data of persons text messaged during the class period, as Smosh  
17 was able to provide the purported opt-in data for Hall and her son in 2021.  
18 Ginsburg Dec. ¶¶ 7-8; See Ex. A, email from Smosh's prior counsel September 9,  
19 2021. Plaintiff's counsel drafted interrogatories and requests for production over  
20 the Christmas holiday, which were issued December 31, 2023 to Smosh. Those  
21 requests sought *inter alia*, information and documents related to the call and text  
22 message records to putative class members. See Ginsburg Dec. ¶¶ 15-16, Ex. B,  
23 interrogatories, Ex. C, requests for production.  
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1 Plaintiff, however, learned Smosh would not be producing the class data on  
2 January 30, 2024, when Smosh's counsel advised that information is only  
3 available to third-party Community.com, Inc., whose platform Smosh used to send  
4 text messages. *See* Ginsburg Dec., ¶ 18; *See* Exhibit "E", email regarding  
5 Smosh's ability to produce class data. Hall did not subpoena Community before  
6 that, because of the obligation to seek discovery from a party before burdening a  
7 non-party seeking for the same documents or information.<sup>1</sup>

10 After learning Smosh would not be producing the class wide data,  
11 Plaintiff's counsel then promptly drafted and issued a subpoena to third-party  
12 Community.com, Inc. *See* Ex. H and Ex. I, subpoenas to Community.  
13 Community.com was served with the subpoena on February 6, 2024. *See Id.*  
14 After being served, in-house counsel for Community conferred with Plaintiff's  
15 counsel and advised she is new to the company, which has had significant staff  
16 turnover, and that she was working with IT professionals on obtaining and  
17 producing the requested documents and data. Counsel has expressed uncertainty  
18 about the scope of documents Community can produce. Ginsburg Dec. ¶¶ 22-27.  
19 Plaintiff has agreed to grant Community an extension of the response deadline  
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25 <sup>1</sup> "[N]on-parties should not be burdened in discovery to the same extent as the litigants  
26 themselves," and "[r]equests to nonparties should be narrowly drawn to meet specific needs for  
27 information." *SGII, Inc. v. Soda Chanda Suon*, No. 8:21-cv-01168-DOC (JDEx), 2021 U.S. Dist.  
28 [LEXIS 252180](#), at \*11-12 (C.D. Cal. Dec. 29, 2021).

1 until March 14, 2024 before seeking to enforce the subpoena due to the volume of  
2 data, the fact that Community is not a party to the suit and that Community has  
3 new staff who are not completely familiar with old records and systems. *Id.*, ¶ 26.  
4 Community has not, however, confirmed it will be able to provide the documents  
5 by that date. *Id.*, ¶ 27.  
6

7  
8 Plaintiff will likely need the document production to prepare the motion for  
9 class certification. [\*Bernstein v. S. California Tel. Co.\*, 2020 U.S. Dist. LEXIS](#)  
10 [163582, at \\*4 \(C.D. Cal. May 27, 2020\)](#) (Pym, J.) (call logs and phone records  
11 relevant for class certification for numerosity and commonality); [\*Mbazomo v.\*](#)  
12 [\*ETourandTravel, Inc.\*, No. 2:16-cv-02229-SB, 2017 U.S. Dist. LEXIS 82411, at](#)  
13 [\\*2 \(E.D. Cal. May 26, 2017\) \(same\); \*Webb v. Healthcare Revenue Recovery Grp.\*](#)  
14 [\*LLC\*, 2014 U.S. Dist. LEXIS 11091, at \\*1 \(N.D. Cal. Jan. 29, 2014\) \(same\).](#) Given  
15 the internal staff turnover within Community.com and the uncertainty as to the  
16 company's record-keeping, it is likely there will be follow up issues and  
17 supplemental requests necessary. Regardless of whether she (1) gets the  
18 production from Community by March 14; (2) gets nothing and has to file a  
19 motion to enforce; or (3) gets partial production with more documents to follow, it  
20 will be difficult or impossible to prepare a motion for class certification by April  
21 16, 2024. Rather than hoping everything will work out and filing a last-minute  
22 request for an extension of the deadline days before its arrival, if it does not,  
23 Plaintiff seeks the extension well before the deadline has arrived.  
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MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

1 After a video-conference conferral between the parties and several email  
2 exchanges, Defendant Smosh advised it does not oppose the 30-day extension of  
3 the class certification deadline. *See* Doc. No. 116.  
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### 5 III. ARGUMENT

#### 6 A. Standard for motion to extend deadlines.

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8 “District judges have broad discretion to manage discovery and to control the  
9 course of litigation under Federal Rule of Civil Procedure 16.” *Avila v. Willits*  
10 *Env’t Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011)). A pretrial  
11 scheduling order may “be modified ‘upon a showing of good cause.’” *Ibid.*  
12 (quoting *Zivkovik v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)).  
13 “The pretrial schedule may be modified ‘if it cannot reasonably be met despite the  
14 diligence of the party seeking the extension,’ but ‘if the party seeking the  
15 modification “was not diligent, the inquiry should end” and the motion to modify  
16 should not be granted.’” *Zivkovik*, 302 F.3d at 1087). “Prejudice to the opposing  
17 party, though not the focus of the inquiry, also may support denying a motion.” *Id.*  
18 at \*3. Further, under this Court’s Initial Standing Order, applications to extend  
19 deadlines set by this Court may be granted where “compelling factual support”  
20 establishes “good cause demonstrating why the change in date is essential.” ECF 9  
21 at 3.  
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27 “Good cause may be found to exist where the moving party shows that it  
28 diligently assisted the court with creating a workable scheduling order, that it is

1 unable to comply with the scheduling order's deadlines due to matters that could  
2 not have reasonably been foreseen at the time of the issuance of the scheduling  
3 order, and that it was diligent in seeking an amendment once it became apparent  
4 that the party could not comply with the scheduling order.” Kuschner v.  
5 Nationwide Credit Inc., 256 F.R.D. 684, 687 (E.D. Cal. 2009)) (finding good  
6 cause to extend discovery deadlines by 60 days where the “case was stayed twice”  
7 and where “unforeseen circumstances” prevented defendants from taking  
8 plaintiff’s deposition); see also Bryant v. Cnty. of L.A., No. CV 20-9582-JFW(Ex),  
9 2021 U.S. Dist. LEXIS 106724, at \*4 (C.D. Cal. June 4, 2021) (Walter, J.)  
10 (finding good cause exists to extend deadlines upon motion from the plaintiff  
11 where the defendant delayed in issuing its disclosures); Hoyt v. Valdovinos, 2021  
12 U.S. Dist. LEXIS 116382, at \*16 (S.D. Cal. June 22, 2021) (finding good cause to  
13 extend fact discovery cut-off by 30 days where parties had “three depositions left  
14 to conduct”); Zions Bancorporation, N.A. v. JPMorgan Chase Bank, N.A., 2022  
15 U.S. Dist. LEXIS 172080, at \*3-4 (S.D. Cal. Sept. 21, 2022) (finding good cause  
16 to extend discovery deadlines for a second time by 45 days where the parties  
17 needed more time to review and produce responsive documents, prepare a  
18 privilege log, review untranslated discovery materials largely in Portuguese, and  
19 the parties had not “taken any of the at least 15 party and third-party depositions”  
20 needed to prepare their motions for summary judgment, noting especially “the  
21 complexity of the international discovery process”); Harper v. Ramos, 2020 U.S.

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

1 [Dist. LEXIS 83610, at \\*3-4 \(C.D. Cal May 12, 2020\)](#) (Austin, J.) (finding good  
2 cause to extend discovery by 90 days “due to unforeseen delays in obtaining  
3 discovery documents and otherwise completing discovery”); [Hearns v. Gonzales,](#)  
4 [2019 U.S. Dist. LEXIS 9397, at \\*1-2 \(E.D. Cal. Jan. 18, 2019\)](#) (granting proposed  
5 extension where “even with due diligence [the plaintiff] cannot meet the court’s  
6 discovery deadline”).  
7  
8

9 **B. Plaintiff has been diligent at pursuing class data from Smosh and third-**  
10 **party Community.com, Inc. and promptly requested the extension**  
11 **when it became apparent it would be necessary.**

12 Where the party seeking the extension has been diligent and delays outside  
13 the control of the moving party necessitate an extension of a deadline, good cause  
14 to extend a deadline exists. [Bryant v. Cnty. of L.A., 2021 U.S. Dist. LEXIS](#)  
15 [106724, at \\*4.](#)  
16

17 Here, Plaintiff has been diligent throughout the process. Days after the case  
18 was transferred from the Eastern District of California to this Court, the Parties  
19 held their Rule 26(f) conference. ECF No. 91. Plaintiff drafted discovery requests  
20 over the holidays and issued her requests days after the 26(f) conference. Ex. B  
21 and C interrogatories and requests for production.  
22  
23

24 The day after Smosh’s counsel informed Hall’s counsel that it was not able  
25 to obtain or produce the data identifying calls to putative class members on  
26 January 30, 2024, Plaintiff issued a subpoena the next business day. *See* Exhibits  
27 H and I, subpoena to Community. At the time the subpoena was issued, it was  
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1 Hall's understanding that Community was prepared to produce the relevant class  
2 data. Ginsburg Dec. ¶ 19. When Community responded to the outreach from  
3 Hall's counsel, its in-house counsel advised that that Community had significant  
4 staff turnover recently and she was new to the company. Ginsburg Dec. ¶ 23.  
5 Accordingly, Community needed additional time to retrieve the documents and  
6 she was unsure what would ultimately be produced. Plaintiff has advised it will  
7 afford Community until March 14, 2024 to provide the relevant class data before  
8 she files a motion to enforce. *Id.*, ¶¶ 23-27.

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12 Once it became apparent Plaintiff may not receive the relevant class data  
13 with ample time before the class certification deadline (despite diligent efforts),  
14 her counsel promptly conferred with counsel for Smosh on the extension of the  
15 class certification deadline. Smosh advised it would not oppose a 30-day  
16 extension. Rather than waiting until the last minute, Plaintiff files this motion five  
17 weeks before the class certification deadline.  
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21 **C. Where Smosh does not oppose the extension of the class certification**  
22 **deadline, no party would be prejudiced.**

23 If a proposed extension is unopposed and no party would be prejudiced by  
24 the proposed extension, that weighs in favor of granting the proposed extension.  
25  
26 See [Aubert v. Dzurenda](#), No. 2:18-cv-01329-GMN-EJY, 2020 U.S. Dist. LEXIS  
27 242661, at \*6 (D. Nev. Dec. 28, 2020) (extending discovery end date noting the  
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motion was unopposed, and therefore “neither party will be prejudiced by the short delay”). Here, Smosh does not oppose the proposed extension of 30 days. Given the lack of opposition and the absence of prejudice to any party, the proposed extension is warranted.

**D. The proposed extension of the class certification deadline would not otherwise disrupt the schedule of the case.**

Plaintiff does not seek to extend the discovery end date or the trial date. Rather, Plaintiff seeks a stand-alone extension of the class certification deadline in light of the delay in obtaining documents, which Plaintiff has been told are in the exclusive possession of a third-party. The current deadlines and the sole proposed extension are set forth in the chart below:

Matter	Time	Date based on current schedule	Proposed modification/ deadline
<b>Trial (jury)</b> <b>Estimated length: 3 days</b>	8:30 am	12/3/24	unchanged
<b>[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions</b>	8:00 am	11/22/24	unchanged
<b>[Court trial] Hearing on Motions in Limine</b>	8:00 am	X	unchanged
<b>Pre-Trial Conference (File Proposed Voir Dire Qs and Agreed-to Statement of Case three days prior to PTC)</b>	8:00 am	11/15/24	unchanged
<b>Submit Pre-Trial Conf.</b>	10/31/24		unchanged

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

1 2 3 4 5 6 7 8 9 10 11 12	<b>Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness Testimony and Time Estimates; File Status Report re: Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.</b>			
13 14	<b>Last day for hearing motions *</b>	1:30 pm	8/5/24	unchanged
15	<b>Discovery cut-off</b>		7/22/24	unchanged
16	<b>ADR Deadline</b>		June 3, 2024	unchanged
17	<b>Class Certification Deadline</b>		<b>April 16, 2024</b>	<b>May 16, 2024</b>

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Where the other deadlines in the case would remain in place, the extension of the class certification deadline by 30 days would not disrupt the proceedings of the case as a whole.

**E. This is the first request to extend any deadlines in this Court's scheduling order.**

This Court's Standing Order requires a party seeking an extension to identify whether prior extensions have been requested. ECF No. 84. This case was transferred to this Court on December 13, 2023. ECF No. 83. The current

1 schedule went into effect January 3, 2024. ECF No. 107. This is Plaintiff's first  
2 request for this Court to extend any deadlines in this schedule.

3  
4 The fact this is Plaintiff's first proposed extension weighs in favor of  
5 granting the proposed request.

6 **IV. CONCLUSION**

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8 For the foregoing reasons, Plaintiff, Kristen Hall requests this Honorable  
9 Court grant her unopposed motion to extend the class certification deadline until  
10 May 16, 2024.

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13 Respectfully submitted,

14 KIMMEL & SILVERMAN, P.C.

15  
16 */s/ Jacob U. Ginsburg*  
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DATED: March 11, 2024

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

**CERTIFICATE OF SERVICE**

I, Jacob U. Ginsburg, Esq. hereby certify I served the foregoing on all parties  
of record via ECF on this March 11, 2024.

*/s/ Jacob U. Ginsburg*

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO EXTEND DEADLINE

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